

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of XAVIER BRYCE FRANKLIN
ELKINS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DENNY LEE ELKINS,

Respondent-Appellant,

and

JOYLYNN GRINDLE,

Respondent.

UNPUBLISHED
September 23, 2004

No. 254992
Branch Circuit Court
Family Division
LC No. 02-002490-NA

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Respondent appeals as of right the trial court's order terminating his parental rights to his son pursuant to MCL 712A.19b(3)(c)(i), (g), (i), and (j).¹ We affirm.

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when we are left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra*. If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*,

¹ The trial court's order did not terminate the parental rights of the child's mother.

462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357.

The trial court did not clearly err in finding that petitioner proved by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights. Petitioner sought termination of respondent's parental rights based on allegations that respondent and the child's mother were homeless and engaged in domestic violence, and that respondent's parental rights to another child were terminated due to physical abuse. The evidence presented at the termination hearing established that respondent voluntarily relinquished his parental rights to the other child after being convicted of third-degree child abuse. Furthermore, the evidence showed that respondent failed to comply with the parent-agency agreement by attending counseling and securing stable employment and housing. Respondent's circumstances were unchanged from the time the child was removed from his custody. The trial court did not clearly err in finding that termination of respondent's parental rights was warranted due to the fact that the conditions that led to the adjudication continued to exist, MCL 712A.19b(3)(c)(i), respondent failed to provide proper care or custody and could not be expected to do so within a reasonable time, MCL 712A.19b(3)(g), respondent's parental rights to another child were terminated based on physical abuse, MCL 712A.19b(3)(i), and it was reasonably likely that the child would be harmed if returned to respondent's custody, MCL 712A.19b(3)(j). Respondent does not argue that termination of his parental rights was clearly not in the child's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood